Supreme Court, U.S.
FILED
OCT 24 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1179

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ARNOLD SONDEREGGER,

Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;
NORMAN W. SINGER; and
ROBERT A. MUELLER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI

ARNOLD SONDEREGGER, IN PROPRIA PERSONA
628 S. ARDMORE, APT. 22, LOS ANGELES,
CALIFORNIA 90005

QUESTIONS PRESENTED

1. Was it an abuse of discretion for the federal judges in this case not to allow the filing of the Petitioner's Third amended complaiht in that it pleaded the misrepresnetations, and the failure to tell of the risks involved in a margin account with interest rated 18 to 21.75 per cent, in a declining market, and with double-loss from a margin call, and the margin call was never explained until it happened and then, the stock broker, NORMAN W. SINGER claimed he had information that the stock would turn around and hit bottom and not to sell all on each of three margin calls.

And further, the Federal judges in this case were to take judicial notice of the Arrignton v. Dean Witter Reynolds ninth circuit case, which stated failure

that a cause of action upon which r lief can be granted for failure to disclose the risks in a declining market and also, for representation.

Therefore, was it an abuse of discretion for not granting leave to the Petitoner to file the Third Amended complaint with a demand for trial by jury?

2. Was it an abuse of discretion not to set aside the the memorandum of decision with the Rule 60 of the F.R.C.P., because the judgment was for a penalty t prevent discovery, and should have noted the Petitioner uncovered frauds in addition to those already presented in the IBM transfer from MERRILL LYNCH, PIERECE, FENNER & SMITH INC. OF Glendale branch, to E. F. HUTTON & COMPANY INC. at Universal City branch, because the 115 IBM

(continued question 2)
DELIVERED was CHANGED when being RECEIVED from 115, to 215 and made a false security of "buying Power" printed on monthly statements for 6½ months?

And therefore, because this IBM fraud, which was concealed for that long became intentional fraud, and therefore, not to realize the causes of action stated in the Third Amended Complaint was a penalty and not for discovery as perported, and was thus void for want of juridciton by rule 60, and therefore, the question is was this an abuse of discretion by the U.S. DISTRCIT COURT JUDGE, AND THE JUDGES OF THE U.S. NINTH CIRCUIT?

3. Was it an abuse of discretion for a Magistrate who is not an

article III judge to rule on the Petitioner's motion for reducing the number of interrogatories in Chambers, which did not allow the Petitioner to present the case of Stoval, that interrogatories that stated all occurrences, and any occurences was too broad and all-inclusive to have to be answered and upon which the Dist. Court Judge ruled on, the without any court reporter or transcript in her memorandum of decision?

4. Was it an abuse of district court Judge for the central district of California, and the U.S. COURT OF APPEALS TO ALLOW the Third Amended Complaint not to filed with any evidentiary hearing that there were no genuine issue upon which relief could be granted?

5. Whether the case should be reversed when the Petitoner's due process of law was denied all throughout the entire case by not filing his amended complaints by not filing many of his briefs, and not having hearing on any evidence?

6. When the Cases mentioned in the U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT such as Wyle vs R.J. REYONLDS INDS. INC. vs. in which discovery was considered not forth coming, was to get dicovery, while the petitioner was the opposite of continuing to make discovery and should not have been penalized for making doscovery, and therefore, was this case really for the Petitioner and not for the Respondents, and therefore, was it an abuse of discretion to use this case against the Petitoner?

7. Was it an abuse of discretion to use the case of ANDERSON v AIR WEST, INC. in the Ninth Circuit memeorandum of decision, when this case talked about a long delayed service of summons, and in the Petitioner's case the summons was very prompty served, and therefor e, was this an abuse of discretion to use a case that did not follow orders when the Petitoner was seeking to get discovery and did make discovery and yet was told it was not fast enough. Is that an abuse of discretion?

INEX OF PETITION

MEMORANDUM OF DECISION AND THE

OTHER DECISIONS OF THE U.S. COURT OF

APPEALS FOR THE NINTH CIRCUIT IN APPENDIX
numbered 1 through 16.

pages.

Juridsdiction Page B

QUESTIONS PRESENTED a,b,c,d,e,f,

CONSTITUTIONAL PROVISIONS xll, xll,xlll.

Statement of the case i, and on.

Reasons for granting certiorari 1 thru
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Conclusion Page 39

IN THE

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No. ....

ARNOLD SONDEREGGER, Petitioner.

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E. F. HUTTON & COMPANY, INC.;
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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioner respectfully prays that a writ of certiorari issue to review the MEMORANDUM of decision by the United States Court of Appeals for the Ninth Circuit which was filed July 26, 1985 affirming MEMORANDUM of decision against the Petitioner. Page A.

JURISDICTION

The Memorandum of decision of the United States Court of Appeals for the Ninth Circuit was filed July 26, 1985.

The Petition for writ of certiorari was mailed by express October 24, 1985.

The jurisdiction of this Court is invoked under 28 U.S. . section 1254(1).

Further Entries on the Court of Appeals for the Ninth Circuit:

July 31, 1985. As of July 26, 1985 ordered Memorandum of decision filed and entered.

July 31. Filed and entered Memorandum of decision.

Aug. 9, 1985. Filed as of Aug. 7, 1985 Applicant's (pro per) motion for an order for a 28 day extention of time to file Petition for Rehearing.

Aug. 14, 1985. Received applicant's

Sept. 21, 1985. Filed Order(CHOY,SNEED,& PREGERSON)Applicant's motion to file Supplemental Brief is moot. Applicant's motion for extention of time to file a rehearing Petition is denied.

Sept. 12, 1985. Filed as of Aug. 30, Applicant's notice of motion for an order for Reconsider leave o file Supplemental Brief (motion for reconsideration of Aug. 21, 1985 Order)

Sept. 21, 1985 Mandate Issued.

Sept. 13, 1985. Received, as of Sept. 11, 1985, applicante's (pro per) "Second Section for Rehearing Petition. Returned to applicant per order of October 13, 1985.

Sept. 13, 1985. Filed Order (CHOY, SNEED and PREGERSON) denying applicant's motions for reconsideration. Page C.

STATEMENT OF THE CASE

In the memorandum of decision and order of the United States District Court Judge PAMELA ANNY RYMER for the Central District of California in the Discussion page 5, it cited Wylie v. R.J. Reynolds Indus., In., 709 F. 2d 515 (9th Cir 1983) and quoted as follows on page 5,

> "The district Court's use of sanctions under Rule 37 is limited by two factors. Id. at 591. The sanctions must be "just," and, secondly, they must be specifically related to the particular claim at issue in the discovery order. Id. Sanctions interfering with a litigant's claim may violate due process when imposed only for punishment for violations of court orders rather than to redress a

discovery violation which threatens the rightful decision of the case."

The Respondents only made a general denial and general defenses, and served 62 interrogatories with 105 sub-parts, and objected to the 12 interrogatories served on them on the grounds of being private information and so forth. And took the four hour deposition, under oath, which consisted of many irrelevant personal questions, that were also repeated in the Respondents' interrogatories.

However, no questions in the deposition asked about the material omissions and concealed frauds, from which the Petitioner was mislead, and upon finding the error in the lodged (new) related-back Second amended complaint with demand for a jury trial

and with 15 exhibits, and the lodged related-back THIRD AMENDED COMPLAINT with a demand for a jury trial and with 15 exhibits.

These, preceded the memorandum of decision to dismiss with prejudice. The lodging of the related-back THIRD AMENDED COMPLAINT with a demand for trial was lodged June 5, 1984, along with the motion for leave to file, that was filed June 5, 1984. The hearing was set for July 2, 1984, but no time for arguments for it was given.

The Civil Minutes - General of 7-2-84 were as follows:

> "Proceedings: Defendant's motion to dismiss;
>
> Plaintiff's motion for leave to file a related-back 3rd amnended complaint by FRCP 15(c).

Court issues a tentative ruling.

Plaintiff argues.

Court orders plaintiff to answer the interrogatories on or before 7/9/84 as stated in the tentative ruling or the action will be dismissed.

"Court denies plaintiff's motion for leave to file a related back 3rd amended complaint."

In FOMAN vs. DAVIS, 83 SUPREME COURT, 227, 371 U.S. 178 (1962),

"9. Federal Civil Procedure

"Outright refusal of federal district court to grant plaintiff leave to amend complaint without any justifying reason appearing for denial is not exercise of discretion by court but is abuse of discretion and inconsistent with

spirit of Federal Rules of Civil Procedure. Fed. Rules Civ. Proc. rule 15(a), 28 U.S.C.A."

The original complaint was filed on 3/9/83 and the FIRST AMENDED COMPLAINT was filed 3/16-83 with proof of service of amended summons and FIRST AMENDED COMPLAINT on E. F. HUTTON & COMPANY, INC. on 3-22-83, and with proof of service of amended summons and FIRST AMENDED COMPLAINT with demand for a jury trial and with 10 exhibits onto NORMAN W. SINGER, and ROBERT A. MUELLER on 3/29/83.

On 5/5/83 filed Defendant's Answer to Complaint. Thus, the Petitioner did not need leave of court to file the First Amended Complaint, because it was filed and served before an answer was made.

The caption reads,

"Civil actin case no. 83-1414-R.G.

First Amended Complaint for Fraud under the Securities & Exchange Act of 1934, Breach of Fiduciary Duty, Fraud and Deceit, Breach of Oral Contract and Written Contracts: Demand for Jury Trial."

On page 1 of First Amended Complaint it reads,

Par.1 "Plaintiff alleges, upon information and belief that in connection with the purchase and sale of securities, E. F. HUTTON & COMPANY, INC., whose transactions in this case occurred at Universal City branch (hereinafter referred to as "HUTTON") and Norman W. Singer (hereinafter referred to as "SINGER") and Robert A. Mueller (hereinafter referred to as "MUELLER") engaged in acts,

practices and a course of business which would and did operate a fraud and deceit upon the plaintiff and made untrue statements of material fact and omitted to state material facts, all of a part of a device, scheme and device to defraud plaintiff by SINGER refusing to follow the demands of ARNOLD SONDEREGGER (hereinafter referred to as "SONDEREGGER") made on 12-23-80.

SUBJECT INDEX

Sanctions may violate due process
In the U.S. DISTRICT COURT
Sonderegger lodge (new) SECOND
AMENDED COMPLAINT, that was taken
off calendar by the Judge. This
complaint corrected an error of
Plaintiff based on the material
omissions of the Defendants.

On June 5, 1984 Plaintiff lodge a related-back Third Amended Complaint with demand for trial by jury and had 15 exhibits and consisted of 43 pages

E. F. HUTTON & COMPANY, INC. added 10o0 IBM shares to the 115 shares (among other shares of oil stocks etc.) to the delivery from MERRILL LYNCH, PIERC, FENNER & SMINT INC. FOR 6-1/4 MONTHS and recorded false buying power all the time, which was relied upon to plaintiff's detriment. The continued concealed fraud, thus, buecame intentional fraud.

MAGISTRATE'S ruling in chambers without any parties deprived Petitioner of the right to present a case law on subject. Ruling in chambers on a protective order

motion lacked due process.
The case law of too broad and too
all inclusive interrogatories need
not be answered was presented at
hearing on interrogatories
but was not recorded in ruling,
thus, an amended ruling was made
leaving out the wording, "each and
every without objection." The U.S.
DISTRICT JUDGE failed to take judi-
cial notice of the amended ruling in
her decision quoting Magistrate with-
out reviewing the ruling.

Petitioner was trying to accom-
plish, discovery and made progress
at all times in doing so, and thus,
all the cases by inversion as to
purpose are for the Petitioner and
leaves the Respondents without any
case law in their favor.

New Supreme Court Law case gives right to arbitrate separately the pendent sate law claims.

Petitioner makes declaration to make a motion in the lower court to have pendent claims sent to Arbitration.

Stock brokers of E.F. HUTTON & COMPANY, INC. deceived the main company, as well as the Petitioner, therefore, Petitioner waives the punitive damages of the case.

Supreme Court Case in regards to civil right for a jury trial by the 7th Amendment of U.S. Consti.

Supreme Court case says rule 37 should not deprive part of constitutional right of due process.

No hearings on evidence was

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ever had and the merits were never heard.

U.S. CT. of Appeals for the 9th Cir. says,

> "Rule 60(b) is clearly designed to permit a desirable objective: that cases may be decided on the merits."

1985 case of Arizona on loss causation.
That considers the entire functioning of the scheme to defraud.

More cases on loss-causation.

Cases that show Petitioner had a meritorious case.

Petitioner showed there were good causes of action upon which relief could be granted.

Conclusion:

CONSTITUTIONAL PROVISIONS

On page 5, line 6,

"...for the purpose of preventing discovery, and thus, was penalty, which was a violation of due process."

In violation of 5th, 14th and 7th amendments of the United States Constition.

In Societe Internationale, Etc. v. Rogers

78 S. CT. 1087, 1094,

"... provisions of the Fifth Amendment that no person shall be deprived without due process of law..."

By rule 60 memorandum of decision void for want of jurisdiction, because her decision was for a penalty only, and violated the 5th,

14th and 7th amendments of the United States Constitution.

The Constitutional Texts are as follows:

Amendment 5, (U.S. CONSTITUTION)

> "... nor be deprived of ... or property, without due process of law."

Amendment 7, (U.S. CONSTITUTION - Civil Trials)

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

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Amendment 14th -

"...nor shall any State deprive any person ..., of property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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THE ARGUMENT

In the Memorandum of decision of the United States District Court for the Central District of California, the Honorable Judge PAMELA ANN RYMER cited Wylie v. R. J. Reynolds Inds., Inc. 709 F. 2d 515 (9th Cir. 1983) and quoted on page 5,

> "The district Court's use of sanctions under Rule 37 is limited by two factors. Id. at 591. The sanctions must be "just," and, secondly, they must be specifically related to the particular claim at issue in the discovery order. Id. Sanctions interfering with a litigant's claim may violate due process when imposed only for punishment for violations of court orders rather than to redress a

discovery violation which threatens the rightful decision of the case."

Quoting from the docket sheet No. 73, on 4-16-84:

> " Plaintiff lodged proposed 2nd Amended Complaint with demand for jury trial,"

and also

> "Filed plaintiff's 4-16-84 notice of motion and motion for leave to file a (new) related-back Second Amended complaint returnable 5-7-84 at 10 A.M."

This was taken off calendar by the Judge.

In this proposed Third Amended Complaint the Petitioner corrected an error that was caused by Respondents in their monthly statements by omitting to disclose the material facts in regard to

the status of total net worth of margin accounts delivered by MERRILL LYNCH at Glendale branch to HUTTON branch at Universal City.

Also, this omitting of material facts was also, done by the monthly statements of MERRILL LYNCH, PIERCE, FENNER & SMITH INC. at the Glendale branch when DELIVERING the Petitioner's account from MERRILL LYNCH to HUTTON at Universal City branch.

On June 5, 1984 the plaintiff and now Petitioner lodge a related-back THIRD AMENDED COMPLAINT with demand for trial by jury of 43 pages and 15 exhibits.

This complaint also, corrected the error that the plaintiff made in the filed FIRST AMENDED COMPLAINT with demand for trial by jury and with 10 exhibits.

The error resulted from the omission and misleading statements by both broker-

age firms in their monthly statements. ARNOLD SONDEREGGER had his account at the MERRILL LYNCH, PIERCE, FENNER & SMITH INC. brokerage at Glendale, California ("MERRILL LYNCH") which DELIVERED plaintiff's other account to E. F. HUTTON & COMPANY, INC. at Universal City ("HUTTON") who RECEIVED the account of the plaintiff to add to his account at HUTTON.

The monthly statments from both firms omitted to state the net worth of plaintiff's account being transferred, and were misleading, in that the CREDIT and DEBITS between brokerage firms is exactly opposite to that of firm and client. Thus, their accounting was misleading to Plaintiff, who did not understand any accounting, and upon finding the error immediately corrected it.

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This was suppressing the facts omitted while bound to disclose them or while giving out other information which was likely to mislead plaintiff.

Also, in the lodged related-back THIRD AMENDED COMPLAINT with demand for trial by jury with 43 pages and 15 exhibits on June 5, 1984, it explained the newly found deceit, and misrepresentation in regards to the following:

On June 5, 1984 ARNOLD SONDEREGGER lodge the related-back THIRD AMENDED COMPLAINT with demand for trial by jury with 43 pages and 15 exhibits, and on pages 15, 16 & 17 explained his new discovery of how the account executive for HUTTON at Universal City branch had changed the figures sent by MERRILL LYNCH.

NORMAN W. SINGER, the account executive had induced the plaintiff to send

his stock account from MERRILL LYNCH to HUTTON. After MERRILL LYNCH delivered the stocks, including 115 IBM, and HUTTON had received the stocks including IBM, HUTTON on top on the monthly statement put rec'd 115 IBM, and on the bottom of the page marked it 215 IBM, and thus added $5,000.00 more market value that was deducted from the margin for 6-1/2 months and each month figured a false buying power figure on each monthly statement, and even, paid a dividend on the unowned 100 shares of IBM. And on the first margin call the error was found and corrected after all the time SINGER had plaintiff relying on the buying power that SINGER proclaimed.

And even, after each of the three margin calls, SINGER induced the plaintiff to only sell what was required and

claimed the stocks would turn around and had hit bottom, because he had research information that he did not have time to explain to me in facts.

Thus, this concealed fraud, which continued for 6-1/2 months became intentional fraud.

This newly discovered fraud by plaintiff was in in the filed FIRST AMENDED COMPLAINT, because accounts had to explain how it happened.

Thus, not to grant leave to file the related-back THIRD AMENDED COMPLAINT with demand for trial by jury was for the purpose of preventing discovery, and thus, was a penalty, which was a violation of due process.

At the hearing of July 2, 1984, the plaintiff asked for an extention of time to answer interrogatories, and was

granted seven days extention of time, in which to answer 11 personal questions involving detailed employment questions, and questions that had already been answered in the plaintiff's deposition.

In the ex-parte application for an order for 30 days extention of time to answer interrogatories on the merits of the case, the Judge denied giving any further extention of time.

However, the plaintiff (petitioner) continued answering interrogatories and asked for a RECONSIDERATION, which was denied.

Still the plaintiff (petitioner) continued answering interrogatories on the merits and made a motion on FRCP Rule 60 to set aside the order of dismissal with prejudice, because it was a penalty to prevent discovery and cited

the motion for a protective order made by the plaintifff (petitioner) that was quoted wrongly in the decision, because of failure to take judicial notice of the Magistrate's amended ruling. To start with, the Magistate denied the motion for protective order in Chambers, which prevented the Petitioner (plaintiff) from presenting Stoval case that said, interrogatories that were too-broad and all-inclusive need not be answered.

Then, at the hearing on the interrogatories, (petitioner) read the following:

> "Defendant's objections to interrogatories which required defendant to state all "all" facts in his possession relative to each occurrence would be sustained on ground that interrogatories were

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too general and all-inclusive to be answered."

At that time, the U.S. MAGISTRATE VENETTA S. TASSOPULOS interrupted, so the plaintiff could not give the cite.

However, after the hearing, the plaintiff asked why he was not allowed to give the cite, which was,

> From Wright and Miller, Federal Practice, page 548, Stovall v. Gulf & So. Am S.C. Co., Tex. 1961, 30 F.R.D. 152."

So, the Magistrate said, "I will amend that part of my ruling or leave out each and every without objection," and this is her ruling, that was misconstrued by both The District Court and the Ninth Circuit appellate court.

> "Proceedings in chambers minute order.

"On Plaintiff's oral request re clarification as to due date of answers to interrogatories, the Court rule that the answers must be served on Defendants on or before March 12, 1984."

At all times Petitioner was trying to make discovery and not trying to get out of discovery, but insisted upon making discovery and the prevention of which was a penalty in violation of due process of the 5th and 14th amendments of the U.S. Constitution, and also, were in violation of the 7th AMENDMENT to U.S. Constitution, which provides for civil jury trials on the merits.

Thus, all the cases cited in the Judges of the 9th Circuit Court of Appeals memorandum of decision by the Respondents in this whole case are all

advocating making discovery, which in their cases was hidden or the equivalent, exactly opposite of the Petitioner making discovery and uncovering frauds and did not want to be prevented from continuing discovery.

Thus, the Petitioner was trying to accomplish, discovery and made progress at all times in doing so, and thus, all the cases by inversion as to purpose are for the Petitioner and leaves the Respondents without any case law in their favor. In Dean Witter Reynolds, Inc. vs. Byrd S.CT. 4-4-85, No. 83-1708, it gives the right to separately have the state law claims pendent to federal securities law claims be sent to arbitration on request of the one of the parties. (No. 83-1708) from 9 Cir.

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The Petitioner, now makes a declaration under penalty of perjury that he wants his pendent claims to be separated and be sent to arbitration before hearing the federal claims, and will make a motion to that effect upon permission to do so.

Also, the stock brokers from HUTTON were deceiving not only the plaintiff at his injury, but were deceiving HUTTON in the main part. Thus, because the violations of the case were caused by the Universal City branch, and not the main company, the Petitioner waives all punitive damages that arose from case law in the first place, and were not Petitioner's idea in the first place.

In regards to violating the Petitioner's right to trial by jury as demanded by the Petitioner, for all claims except

for arbitration of pendent state claims if allowed,

The Supreme Court said, in Gasoline Products Co. v. Champin Co. 283 US. S a6 498, 51 S.CT. (1931),

> "All of vital significance in trial by jury is that issues of fact be submitted for determination with such instructions and guidance by the court as will afford opportunity for rules governing trials at common law."

If it is a penalty and to prevent discovery, then, the motion to dismiss with prejudice, then, the PETITIONER's motion to set aside the Memorandum of Decision and order, which was denied should be reversed, because the Respondents were preventing discovery instead

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of letting the Petitioner continue in accomplishing discovery, and it was an abuse of discretion, because it was arbitrary and discriminatory.

In Societe Internationale, Etc. v. Rogers, 78 Supreme Court 1087, page 1094,

> "The provisions of rule 37 which are here involved must be read in light of the provisions of the Fifth Amendment that no person shall be deprived without due process of law, and more particularly against the opinions of this Court in Hovey v. Elliot, 167 U.S. 409, 17 S. CT. 841, 42 L.ED. 215, and Hammon Packing Co. v. State of Arkansas, 212 US. S 322, 29 S. CT, 370, 53, L.Ed. 530." These decisions establish that there are constitutional limitations upon the

power of courts, even in aid of their own processes, to dismiss an action without affording

"a party the opportunity for hearing on the merits of his case. The authors of rule 37 were well aware of these constitutional considerations. See notes of advisory committee oin rules, rule 37, 28 U.S.C. 91952 ed) p. 4325."

"In Hammond Packing Co. v. State of Arkansas S. CT. 370,

"...All the State required 'was a bona fide effort to comply with an order..., and therefore a reasonable showing of an inability would have satisfied the requirments... of the order page 347."

Thus, the Petitioner, (Plaintiff-Appellant) worked as fast as he could

being at the start he did know any security law until he found court of appeals case law, and did not know accounting which held back from early discovery of the concealed and therefore, intentional frauds in accounting and other deceptions, to the detriment of the Petitioner, which proximately caused Petitioner's harm.

No hearing on the evidence was ever had and the merits were never heard.

In Patapoff v. Johns Manville Sales Corp. 267 F 2d 863 (9th Cir. 1959)

> "... Rule 60 (b) is clearly designed to permit a desirable objective: that cases may be decided on their merits."

This case should be reversed on its merits, because of the applicable case law here cited, and the facts that follow.

Thus, by rule 60 the memorandum of decision of the United States District Court Judge PAMELA ANN RYMER was void for want of jurisdiction, because her decision was for a penalty only, and violated the 5th, 14th and 7th amendments to the United States Constitution.

The following case law shows the Plaintiff-Appellant had a meritorious case.

Kafton, et al v. Baptists Park Nursing Center, Inc. United States District Court, District of Arizona, No. CIV 78-968 CLH June 28, 1985

> "Exchange Act-Anti-fraud-Causation. - Loss causation does not have to be established between each misrepresentation or omission and the injury when an investor has alleged a scheeme to defraud since

the injury would stem from all interacting elements of the scheme and not solely from a particular misstatement or omission. The crucial nexus would be between the entire functioning scheme and the injury rather than between particular misrepresentation and the loss."

"Bond counsel defendants requested the Court's findings of disputed fact and or conclusions of law in support of its April 14, 1985 denial of bond counsel's motion for partial summary judgment on the issue of the tax-exempt nature of the 1976 Nursing Center bonds. Bond counsel raised two arguments in their memorandum; judicial estoppel and failure to show loss causation.

However, their request for findings and conclusions is directed only to bond counsel's contention that plaintiff has not "shown loss causation, that is, that plaintiff has failed to establish that her injury was caused by any misrepresentation regarding the tax-exempt nature of the bonds."

"The findings of disputed fact are whether defendants fraudulently induced the plaintiff class to purchase the bonds and whether the misrepresentations or omissions were material."

"When a Rule 10b-5 action is brought for material misrepresentation or omissions the plaintiff must prove two types of causations: (1) transaction causation,

where the alleged misrepresentations or omissions caused the pecuniary injury suffered by the plaintiff. Hatrock v. Edward D. Jones & Co. 750 F2d 767, 773 (9th Cir. 1984).

"Both types of causation are not required in every Rule 10b-5 case. A plaintiff "should not have to prove loss causation where the evil is not the price the investor paid for the security, but the broker's fraudulent inducement of the investor to purchase the security." Id.

Continuing page 92, 231,

"Transaction causation requires a plaintiff in a misrepresentations or omissions case to show that he relied upon the misrepresentations

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85-1178

SUPREME COURT, U.S.
FILED
OCT 24 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. .....

IN THE

SUPREME COURT of the UNITED STATES

Octber Term, 1985

ARNOLD SONDEREGGER,

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NORMAN W. SINGER; and
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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOR PETITION FOR WRIT OF CERTIORARI

APPENDIX ON PETITION CALLED APPENDIX A,
AND NOW APPENDIX B & C

ARNOLD SONDEREGGER, IN PROPRIA PERSONA
628 S. ARDMORE, APT.22
LOS ANGELES, CALIFORNIA 90005

In SUPREME COURT OF THE UNITED STATES

APPENDIX A
U.S. COURT OF APPEALS FOR NINTH CIRCUIT MEMORANDUM of Decision filed July 26, 1985 was in the Appendix of the Petition for Writ of Certiorari and so call it Appendix A.

APPENDIX B from
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT CA 84-6259

Order of December 5, 1984

Order of April 9, 1985

Order of May 29, 1985

Oral Argument is not necessary June 12, 1985

Order of August 21, 1985

Order September 13, 1985

Mandate issued September 12, 1985

Judgment affirmed filed and entered July 31, 1985

APPENDIX C for the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Civ83-1414-PAR

MEMORANDUM OF DECISION AND ORDER ON July 2, 1984 and dated July 12, 1984

Memorandum denying RECONSIDERATION August 22, 1984

ORDER ON MODIFICATION JUDGMENT denied (Denied FRCP Rule 60 to set aside decision)

Civil Minutes

Denied grant leave to file related-back Third Amended Complaint

Order Taking Motion off calendar (new) Second Amended complaint (in regards to granting leave to file)

Magistrate's civil minutes of February 13, 1984

Magistrate's amended civil minutes of February 21, 1984
Filed February 23, 1984

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California ORDER

FILED
DEC 05 1984
Philip B Winberry
Clerk, U.S. Court of Appeals

Before: BARNES, Circuit Judge

Appellant's motion for reconsideration of the November 6, 1984 Motions Attorney order is denied.

The transcript of appellant's deposition, notice of deposition, and exhibits, submitted by appellant on October 26, 1984, shall be lodged by the clerk for such use as the panel that decides

this appeal on its merits wishes to make use of them.

Appellant is granted an extension of time through December 30, 1984 to file the opening brief.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California ORDER

FILED
APR 09 1985
Philip B Winberry
Clerk, U.S. Court of Appeals

Appellant is granted an extension through April 29, 1985 to file a reply brief.

A further extension of time, even if unopposed, will be granted only upon a showing of extraordinary circumstances and, in most circumstances, can only be granted by a judge.

This order is subject to reconsideration by a judge if any opposition is

filed within ten (10) days of the entry of the order.

For the Court:

/s/
Joshua R. Steinhauer
Motions Attorney/Deputy Clerk
Local Rule 22

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California ORDER

FILED
MAY 29 1985
Philip B Winberry
Clerk, U.S. Court of Appeals

The amended reply brief received from pro se appellant Arnold Sonderegger shall be lodged with the court. The panel that considers the appeal on the merits will give the brief such consideration as it deems appropriate.

This order is subject to reconsideration by a judge if any opposition is

filed within ten (10) days of the entry of the order.

For the Court:

/s/
Susan M. Johnson
Motions Attorney/Deputy Clerk
Local Rule 22

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

P.O. Box 547

San Francisco, California 94101

TO: All Counsel in 84-6259 Sonderegger v. E.F. Hutton & Co.

DATE: June 26, 1985

Dear Counsel:

Upon due consideration of your objection to submission of this case without argument, the Court has decided oral argument is not necessary.

On June 12, 1985, your case was submitted for decision to Judges Choy, Sneed, and Pregerson, CJJ. You will be

promptly notified by mail when the case is decided.

Very truly yours,

Philip B. Winberry
Clerk of Court

By: /s/
Tim Hom
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant	)	No. 84-6259
vs.	)	ORDER
E.F. HUTTON & CO., INC., et al., Defendants-Appellees	)	FILED AUG 24 1985 Philip B Winberry Clerk, U.S. Court of Appeals

Before: CHOY, SNEED, and PREGERSON, Circuit Judges

Appellant's motion to file supplemental brief is moot.

Appellant's motion for an extension of time to file a rehearing petition is denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California

FILED
SEP 13 1985
Clerk, U.S. Court of Appeals

Before: CHOY, SNEED, and PREGERSON, Circuit Judges

The appellant's motions for reconsideration of this court's order filed August 21, 1985 are DENIED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California MEMORANDUM*

FILED
JUL 26 1985
Philip B Winberry
Clerk, U.S. Court of Appeals

Appeal from the United States District Court for the Central District of California
Pamela Ann Rymer, District Judge, Presiding
Submitted** June 12, 1985

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The panel finds this case appropriate for submission without argument pursuant to 9th Cir. R. 3(f) and Fed. R. App. P. 34(a).

Affirmed.

(The full text of this memorandum appears in Appendix A.)

SEP 12 1985
MANDATE ISSUED

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff/ Appellant	)	No. 84-6259
	)	DC# CV83-1414-PAR Central California
vs.	)	
E.F. HUTTON & CO., INC., et al., Defendants/ Appellees	)	

APPEAL from the United States District Court for the CENTRAL District of CALIFORNIA.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the

CENTRAL District of CALIFORNIA and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the APPEAL judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

FILED and ENTERED July 31, 1985

Appendix C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR MEMORANDUM OF DECISION AND ORDER

FILED
JUL 02 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Defendants have moved for dismissal of this case on the grounds that plaintiff, who is appearing pro se, has failed to comply with the Court's discovery orders. Having repeatedly cautioned plaintiff about the consequences of his failure to obey the Court's orders and after giving plaintiff every reasonable opportunity to bring himself into compliance, the Court now concludes that plain-

tiff cannot or will not comply and that dismissal is the only appropriate sanction.

FINDINGS OF FACT

Plaintiff, appearing pro se, filed this action on March 9, 1983. His complaint alleges violation of the Securities Exchange Act of 1934, 15 U.S.C. S. 78j(b), breach of fiduciary duty, fraud, and breach of contract, and seeks more than $81,000 in compensatory and $162,000 in punitive damages. In brief, plaintiff claims that two account executives at E. F. Hutton defrauded hom of more than $80,000 between December of 1980 and April of 1982 by "churning" his account and refusing to sell stocks in the account when he requested them to do so. The 15-page, four count complaint is full of conclusory allegations and misap-

plied "legalese," and does not begin to meet the minimum requirements of a short and plain statement of the factual basis of plaintiff's claim.

Plaintiff's proposed third (and second) amended complaints do not solve these problems. The third amended complaint is 43 pages long, not including exhibits, and contains 209 paragraphs. The prayer for damages is reduced to about $68,000 in compensatory damages and another $136,000 in punitive damages. However, the factual basis of the claims is essentially the same, except for the inclusion of more confusing and unnecessary detail. Plaintiff lodged the proposed third amended complaint on June 5, 1984. The proposed second amended complaint was lodged on December 6, 1983.

Defendants answered the complaint on April 5, 1983. They denied all liability and raised several affirmative defenses including laches, waiver and estoppel. Shortly thereafter, defendants attempted to initiate discovery. When they noticed plaintiff's deposition, however, he sought a protective order. Magistrate Venetta S. Tassopulos denied plaintiff's motion for a protective order after finding that "no showing for issuance" of the order had been made. Plaintiff's motion for reconsideration was denied by this Court on June 13, 1983 and plaintiff was ordered to appear for his deposition. Defendants commenced the deposition on June 14, but it had to be adjourned without being completed.

On August 4, 1983, the Court set a discovery cut-off of December 31, 1983.

At that time, defendants contemplated serving interrogatories on plaintiff "within two weeks." By the time of the next status conference in the case, October 24, 1983, these interrogatories had been outstanding for some time without plaintiff having responded. Defendants' counsel stipulated to extend the time for plaintiff's response until November 23, 1983 but plaintiff still did not respond. On November 22, 1983, the Court denied an ex parte application by plaintiff seeking a further extension of time within which to file his answers to the interrogatories.

The Court held a settlement conference in the case on December 8, 1983 but settlement was not accomplished. On January 5, 1984, after the discovery cut-off had passed, plaintiff filed his first

motion seeking leave to file an amended complaint. Plaintiff withdrew his request for leave to amend shortly thereafter.

On February 13, 1984, Magistrate Tassopulos granted defendants' motion for an order compelling answers to interrogatories. The Magistrate ordered plaintiff to answer "each and every interrogatory without objection" by March 12, 1984. Although declining to impose any monetary sanctions against plaintiff at that time, the Magistrate indicated that failure by plaintiff to answer the interrogatories on time could result in an award of sanctions. Magistrate Tassopulos also denied a motion by plaintiff for a protective order. This Court denied an ex parte application by plaintiff on March 14, 1984 seeking a further exten-

sion of time to answer the interrogatories.

Having still not received answers to the interrogatories on April 9, defendants moved to dismiss and for an order compelling plaintiff to pay their reasonable attorneys' fees in an amount of $2,000. The Court granted plaintiff one extension of time to respond to the motion and then denied a second request for an extension. On May 7, the Court took the motion off the calendar and indicated that, in the event that the Court deemed an oral argument necessary, it would notify counsel of a new hearing date.

On May 11, 1984, plaintiff filed with the Court a 15-page document purporting to answer 11 of the 62 interrogatories propounded by the defendants. The

"answers" contained lengthy quotations of plaintiff's deposition testimony and other impertinent information. Plaintiff did not explain his failure to answer the remaining interrogatories. However, in other documents filed in the case, plaintiff contended that several of the interrogatories, which asked plaintiff to "identify each . . . statute, ordinance, law or regulation" which he claims defendants violated and to "describe each alleged violation in detail," were "too broad."

Finally, on June 5, 1984, plaintiff filed his motion for leave to file a third amended complaint. At the hearing on plaintiff's motion for leave to amend on July 2, the Court issued a tentative ruling and then orally denied plaintiff's motion. The Court concluded that the

proposed amendment would be futile in that it neither added claims for relief nor satisfied the requirement of a short and plain statement.

In addition, the Court raised defendants' still-pending motion to dismiss and inquired as to plaintiff's compliance with prior discovery. The Court gave plaintiff one more opportunity; and ordered plaintiff to comply fully with the order compelling answers to interrogatories no later than July 9, 1984. On that day, rather than serving answers as ordered, plaintiff filed another ex parte application for an extension of time to answer. The Court denied the application.

DISCUSSION

Rule 37 of the Federal Rules of Civil Procedure authorizes the district

courts to consider a wide range of sanctions, including dismissal, for failure to comply with discovery orders. Wyle v. R. J. Reynolds Indus., Inc., 709 F.2d 585 (9th Cir. 1983). The district court's use of sanctions under Rule 37 is limited by two factors. Id. at 591. The sanctions must be "just," and, secondly, they must be specifically related to the particular claim at issue in the discovery order. Id. Sanctions interfering with a litigant's claim may violate due process when imposed only for purposes of punishment for violations of court orders rather than to redress a discovery violation which threatens the rightful decision of the case. Id. Dismissal as a discovery sanction should be reserved for "extreme cases" where the violations are willful or in bad faith or where they

prejudice an opposing party's ability to present facts in support of its claim or defense. Id. at 589.

Although there is nothing to indicate that the plaintiff in this case is acting in bad faith or with an intent to deceive the opposing party or the Court, his prolonged refusal to provide answers to defendants' initial interrogatories can only be characterized as willful. The Court and the Magistrate have made it very clear to plaintiff that, if this action is to proceed he must cooperate in defendants' attempt to discover the basis of his claims. Knowing this, plaintiff has nonetheless persisted in raising groundless objections to the discovery sought and has refused to provide any meaningful answers on the central issues of the case. Since plaintiff would

clearly be the most important witness were this case ever to reach trial, his refusal to provide meaningful discovery would severely prejudice defendants' ability to present a defense. The Court's ability to reach a rightful decision would also necessarily be impaired.

No other sanction appears adequate to bring about compliance with the Court's orders and to deter future violations of this nature. Deterrence of future violations by this and other litigants is a proper consideration for the Court on this motion. Id. at 589. The Court doubts that any substantial monetary sanction could be collected and thus, such a sanction would not be likely to bring about compliance. Plaintiff has already been given numerous extensions,

second chances, and warnings. He is not entitled to any further indulgence.

Nor does plaintiff's belated filing of answers to a few of the interrogatories merit denial of defendants' motion. A partial, last-minute tender of information does not preclude dismissal where the party has already willfully disobeyed court orders and delayed prosecution of the action. Id. at 591; Chism v. National Heritage Life Ins. Co., 637 F.2d 1328 (9th Cir, 1981). This is such a case.

However, the Court is not persuaded that an award of attorneys' fees, in addition to dismissal, is appropriate here. Moreover, dismissal is sufficient to cure any prejudice to defendants from plaintiff's violation of the discovery orders. Accordingly,

IT IS HEREBY ORDERED that:

1. This action is hereby dismissed with prejudice;

2. Defendants are entitled to their costs in this action in an amount to be determined upon application to the Clerk.

DATED: July 12, 1984.

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR MEMORANDUM OF DECISION AND ORDER

FILED
AUG 22 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Plaintiff seeks reconsideration of the Court's order, entered July 26, 1984, dismissing this action with prejudice because of plaintiff's failure to comply with certain discovery orders. Since entry of the dismissal order, plaintiff has filed answers to three more of the interrogatories propounded by defendants. By the Court's count, these latest filings still leave 43 of the 62 inter-

rogatories served upon plaintiff unanswered. It has been approximately one year since defendants served these interrogatories.

In support of his motion for reconsideration, plaintiff makes no showing of any of the permissible grounds for such a motion under Local Rule 7.16. He does not contend that there is a material difference in fact or law from the facts and law presented to the Court prior to its entry of the order of dismissal. Nor has plaintiff shown that new material facts have emerged or that a change of law has occurred since the Court's previous ruling. The fact that plaintiff has now answered three more of the long-outstanding interrogatories after his action has been dismissed is not material since the Court has previously ruled that

such last-minute, partial efforts to comply with discovery orders are ineffectual. See Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 591 (9th Cir. 1983). Finally, plaintiff has not shown that the Court manifestly failed to consider material facts that had been presented to it prior to its ruling on the motion to dismiss. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for reconsideration of the order dismissing this action with prejudice is denied.

DATED: August 22, 1984

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR ORDER ON MOTION FOR MODIFICATION OF JUDGMENT

FILED
AUG 30 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Having reviewed plaintiff's motion for relief from judgment, the Court has determined to waive oral argument pursuant to Local Rule 7.11 and hereby denies the motion. The alleged clerical error identified by plaintiff is neither an error nor is it material to the Court's ruling on the motion to dismiss. There is no need for correction of the order. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for relief from clerical mistake is DENIED.

DATED: August 30, 1984

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 83-1414 PAR Date 7/2/84

Title Arnold Sonderegger -v- E F Hutton, & Co.

PRESENT:

HON. PAMELA ANN RYMER, JUDGE

Linda Orona, Deputy Clerk

Elaine Cohen, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Arnold Sonderegger, pro-per

ATTORNEYS PRESENT FOR DEFENDANTS:

Sandra Malek

PROCEEDINGS: Defendant's motion to dismiss;
Plaintiff's motion for leave to file a related back 3rd amended complaint by FRCP 15(c).

Court issues a tentative ruling.

Plaintiff argues.

Court ORDERS plaintiff to answer interrogatories on or before 7/9/84 as stated

in the tentative ruling or the action will be dismissed.

Court denies plaintiff's motion for leave to file a related back 3rd amended complaint.

Initials of Deputy Clerk ___/s/___

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR ORDER TAKING MOTION OFF CALENDAR

FILED
MAY 02 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Defendants have filed a motion to dismiss and plaintiff's motion for filing of 2nd amended complaint to be heard on May 7, 1984.

On its own motion the Court orders that the hearing of the above motion be taken off calendar and that counsel be relieved from appearing before the Court. If the Court deems oral argument necessary, it will notify counsel and set a

hearing date. If the Court deems oral argument unnecessary (Local Rule 7.11), it will notify counsel of its disposition of the motion by written order as soon as practicable.

DATED: May 2, 1984

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO. CV 83-1414-PAR (Tx)

DATE: February 13, 1984

TITLE: ARNOLD SONDEREGGER VS. E. F. HUTTON & CO., INC., ET AL.

PRESENT:

HONORABLE VENETTA S. TASSOPULOS,
U.S. MAGISTRATE

Yvonne Estrada, Deputy Clerk

Tape Number 36A

ATTORNEYS PRESENT FOR PLAINTIFFS:

ARNOLD SONDEREGGER
In Propria Persona

ATTORNEYS PRESENT FOR DEFENDANTS:

SHELDON COHEN

PROCEEDINGS: 1. HEARINGS ON DEFENDANT'S MOTION FOR ORDER COMPELLING ANSWERS TO WRITTEN INTERROGATORIES

2. IN CHAMBERS RULING ON PLAINTIFF'S ORDER RE NUMBER OF INTERROGATORIES.

Parties present and argue the matter of the Defendant's Motion for Order Compelling Answers to Written Interrogatories before the Court.

The Court orders the motion granted. Plaintiff is to answer each and every interrogatory without objection within thirty (30) days.

The Court does not impose any monetary sanctions at this time, but if answers are not properly made to the interrogatories, the Defendant may motion the Court for sanction at that time.

IN CHAMBERS

The Court orders the Plaintiff's Motion for Protective Order re number of interrogatories is denied.

COPIES: JUDGE RYMER
PARTIES
MICRO

/s/
Initials of Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO. CV 83-1414-PAR (Tx)

DATE: February 21, 1984

TITLE ARNOLD SONDEREGGER vs. E. F. HUTTON & COMPANY, INC., et al.

PRESENT:

HONORABLE VENETTA S. TASSOPULOS, U.S. MAGISTRATE

Yvonne Estrada, Deputy Clerk

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS: IN CHAMBERS MINUTE ORDER

In Plaintiff's oral request re clarification as to due date of answers to interrogatories, the Court rules that the answers must be served on Defendants on or before March 12, 1984.

COPIES: JUDGE RYMER
PARTIES
MICRO

/s/
Initials of Deputy Clerk

or omissions and was thereby induced to engage in the transaction. Schick v. Penn-Dixie Cement Corp., 507 F2d 374, 380 (2nd Cir. 1974). Cert. denied, 421 U.S. 976 (1975). However, in a so-called fraud-on-the market case, "proof of subjective reliance on particular misrepresentations" need not be shown."

"Blackie v. Barrack 524 F2d 891, 906 (9th Cir. 1975) cert. denied, 429 U.S. 816 (1976). In such cases transaction causation will be "inferred from the materiality of the misrepresentation." Id.; see also Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 153-54 (1972)

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"The Court concludes that in a Rule 10b-5 case where the plaintiff has alleged a scheme to defraud, loss causation need not be established between each misrepresentation or omission and the plaintiff's injury."

Those cases and ARRINGTON v. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. 651 F2d 515 (9th Cir. 1981)

Societe Internationale, etc. v. Rogers 78 S.Ct. 1087

Singleton v. Genason 545 F2d 1224 (9th Cir. 1976)

Kehn v. Smith Barny, Harris Upham & Co., Inc. (9th Cir. 736 F2d 1283.

ROBERTSON v. Dean Witter Reynolds, Inc. 749 F2d 530 (9th Cir. Dec. 1984)

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Patapoff v. Johns-Manville Sales Corp. 267 F2d 863 (9th Cir. 1959)

Foman vs. Davis, 83 S.CT. 227, 371 U.S. 178 (1962)

are the cases on which the Plaintiff-Appellant relies.

The following deals with the facts of the concealed frauds, misrepresentations or omissions and the misleading that were intentional or reckless disregard for the customer's interests, and to which the Plaintiff-Appellant relied to his detriment.

THE PLAINTIFF-APPELLANT presented in the (new) lodged additional SECOND AMENDED COMPLAINT with demand for jury trial, and in the lodged THIRD AMENDED COMPLAINT with demand for a jury trial, good causes of action upon which relief could be granted, but it was not

granted by the district Judge Court of Appeals judges.

Likewise the filed FIRST AMENDED COMPLAINT with demand for jury trial, also, showed some causes of action upon which relief could be granted, but was not recognized by the District Judge and Court of Appeals Judges.

The following shows how the combined violations of the SECURITIES AND EXCHANGE ACT of 1934, with the 78j(b), 10(b), and the SEC rule promulgated thereunder 10(b)-5 were interrelated to state several causes of action upon which relief could be granted, and combined causes injury and damages of consuming the Plaintiff-Appellant's portfolio from $68,432.00 after the slow process of liquidation to $5,418.00 and of that Plaintiff-Appellant owed $3,000.00 to the Universal Studios

credit union, which left $2,000.00 of assets and an old Chrevrolet car.

The Plaintiff-Appellant would like to present that on 11-25-80 he stated to his account executive, at HUTTON at the Universal City Branch, that he would like to sell his 300 Basic Resources N.Y. stock, because it did not pay any dividend and the interest on his debt was high (18%).

NORMAN W. SINGER said,

> "The research analysts say that OCCIDENTAL PETROLEUM is ready to make a quick move up, and if you buy 100 OXY, I will sell the 300 BASIC RESOURCES N.Y. and then, sell it right back."

Plaintiff-Appellant knew that 100 OXY was bought and that 100 Basic Resources N.U was sold.

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However, on 12-09-80 Plaintiff-Appellant asked NORMAN W. SINGER to sell the OXY that had risen in price from $34.50 to $37.50 and to sell the other stocks that were not rising, but declining in price.

SINGER said,

> "No, I am not selling, but will buy you 100 more OXY. Your account will overtake the high interest on your margin account, because the values will go up."

Then, on December 23, 1980 Plaintiff-Appellant asked SINGER to sell all of his stocks and end the account with HUTTON because he wanted to yet get high profits from his big oil stocks and deduct his debt interest from income tax returns.

SINGER said,

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"No, why don't you wait. It will lap over into the New Year, anyway, with two holidays of Christmas and New Year."

Plaintiff stated that he wanted it all sold and to end the account with HUTTON at Universal City branch, and SINGER said,

"You have too many stocks, and I don't have time, now."

Plaintiff stated,

"Then, I will have to call for the branch manager."

SINGER said,

"You have already had two account executives and the manager won't give you another one just to end your account."

Plaintiff-Appellant stated,

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"I want you to have it all sold by December 31, 1980 so, I can get the big profits, and deduct the high margin interest from my account from it."

SINGER said,

"I will see what I can do. You have many stocks to write up."

On January 7, 1981 Plaintiff-Appellant went to the office and stated,

"I was supposed to get the sales slips from selling all of my stocks and did not receive any. My 100 shares of STANDARD OIL OF CALIFORNIA was $115. per share on November 30, 1980 and on December 31, 1980 it had dropped to $99.50, and my portfolio is losing, including the OCCIDENTAL PETROLEUM CORP. back to $34.625."

SINGER said,

> "Your stocks are going to turn around and go even higher than before. You don't have to worry about the high interest rates, because your account is strong and will overtake and pay off the interest."

(The interest rates on 12-30-80 were 22.75%)

Plaintiff-Appellant reiterated that he has sold his 76 STANDARD OIL OF OHIO shares at MERRILL LYNCH at Beverly Hills branch at $94.50 on 06-06-80 and that his account had better stock at that brokerage firm, which included IBM, and other big oil stocks such as SD, SN, UCL and that he had a debt interest to pay off there.

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SINGER stated that Plaintiff's account was strong and would overcome the high interest charges and make more profit for the Plaintiff.

Plaintiff-Appellant asked to see a supervisor, and was told by SINGER that he had research information and that Plaintiff's portfolio would go high enough, so that, the sales would make more profit and burn off the interest at the same time.

This was misrepresentation, because the interest rates on Plaintiff-Appellant's account was 22.25%, and that the high interest rates cause stock to decline in value, and thus, breached a fiduciary duty to disclose, and further breached a fiduciary duty along with setting up a fraud by OMITTING TO STATE the RISKS that in a margin call, are

double, and would require Plaintiff-Appellant to be forced to sell at drastically lower prices.

Plaintiff-Appellant thought interest would just go on until paid, as it would be at a bank.

Thus, the Plaintiff-Appellant relied to his detriment when on January 23, 1981 SINGER said,

> "I want to buy you 100 shares of LTV Corporation it will make a quick profit. I have research information, but I don't have time to explain it to you."

Plaintiff-Appellant said,

> "I do not know anything about it and do not want it. I just want to stop the high interest and sell."

SINGER said,

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"It will make a quick profit and then, I will sell it."

Plaintiff-Appellant relied that SINGER would sell very shortly, but each time he asked to have the LTV sold, SINGER said,

"No, buy more,"

until 500 shares of LTV were bought, and SINGER never sold any LTV CORP. stock.

When SINGER bought 100 LTV on 12-23-81, instead of selling all of Plaintiff-Appellant's stock, it culminated the first part of the intentional fraud against the Plaintiff-Appellant, because relied after not being able to see a supervisor, on SINGER's word, which caused the lower prices, because if the Plaintiff-Appellant had known of the margin call troubles and that high

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interest causes stock to decline, he would nave called the SEC sooner.

On the second time Plaintiff asked Singer on 02-17-81 SINGER again said,

> "I will sell 53 Caesar World and 28 MCA INCORPORATED, if you will buy something else."

Whereupon 100 UNION OIL OF CALIFORNIA were bought and 53 shares of CAESAR WORLD and 28 shares of MCA INCORPORATED were sold.

SINGER again stated,

> "The reason I am not selling all of your stocks is because - just take my word for it - you will make money just holding onto those."

SINGER kept on misleading and misrepresenting and in getting the Plaintiff-Appellant to transfer his stocks to HUTTON at Universal City, and then, on

the First margin call stated the stocks in plaintiff's account had reached bottom and got the plaintiff to rely upon his word by selling 100 MIM HOLDING from Australia at the MERRILL LYNCH branch at Glendale, California and sent the check over for $830.00 in reliance that SINGER said, his account would turn around and not have any more margin calls, but would prosper.

On the second margin call SINGER said,

> "Your account has hit rock bottom now. And, to not sell anymore than you just are required to sell."

And on the Third margin call SINGER said,

> "Now you can really believe the research department that your account has hit bottom and will turn around,"

and again said,

> "I don't have time to talk to you to explain it to you."

And the frauds continued, when, Plaintiff-Appellant asked SINGER to sell his AMERADA HESS stock on 12-14-81, SINGER stated,

> "No, buy more, I am going to buy you 100 more shares of AMERADA HESS."

which thus made 300 shares of AMERADA HESS CORP., the third 100 shares was bought, and SINGER claimed he knew about AMERADA HESS very well, even though Plaintiff-Appellant told him the WALL STREET JOURNAL says the Court of Appeals Judge said, that MOBIL CORP. DEL. had anti-trust problems and AMERADA HESS CORP. would not help, because it would

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just be adding another oil company to MOBIL CORP.

Again, the stock broker had the Plaintiff-Appellant turned away and made to rely on his claim, not knowing about the COMPANIES.

Finally, when SINGER flatly refused to sell all 500 shares of LTV, Plaintiff-Appellant asked for a new stock broker to sell all of his stock, but was confronted with new branch manager, and a new stock broker, who continued to refuse to liquidate, stating the stocks were ready to go back up. And the interest charges and margin calls consumed Plaintiff-Appellant's account, which caused the injury by omissions, misrepresentation, breach of fiduciary duties, upon which the Plaintiff-Appellant relied to his detriment.

The scheme was a deceptive device all the way through the account.

IN CONCLUSION, it is urged that the Memorandum of Decision and Order to Dismiss with Prejudice be reversed.

That the Petitioner be allowed to make a motion for the endent state claims be first sent to arbitration.

That the Petitioner be allowed to withdraw his punitive damages, because the branch office, errors and frauds should not be put upon the whole company in this case, and because the petitioner does not wish to claim punitive damages in this case.

That a trial by jury be allowed to hear the Federal claims.

That the briefs received by the COURT OF APPEALS FOR THE NINTH CIRCUIT, that were not filed, be filed.

That the case be reversed for proceedings in the lower court including permission to submit a 4th Amended Complaint.

Respectfully submitted by

Arnold Sonderegger

ARNOLD SONDEREGGER
In PROPRIA PERSONA
628 S. ARDMORE, APT. 22
LOS ANGELES, CALIFORNIA 90005

APPENDIX TO THE DECISIONS

OF THE U.S. COURT OF APPEALS

FOR TH NINTH CIRCUIT AS FOLLOWS

PAGES 1 THRU 16.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER,

Plaintiff-Appellant,

v.

E.F. HUTTON & CO., INC., NORMAN W. SINGER and ROBERT A. MUELLER,

Defendants-Appellees.

No. 84-6259
DC # CV 83-1414-PAR

MEMORANDUM*

Appeal from the United States District Court for the Central District of California
Pamela Ann Rymer, District Judge, Presiding
Submitted** June 12, 1985 - San Francisco, CA

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.
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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

I.

FACTS AND PROCEEDINGS BELOW

In March 1983, the plaintiff brought this action alleging securities fraud against E. F. Hutton and two individual stockbrokers. After the defendants answered the plaintiff's complaint, they attempted to initiate discovery. When they noticed the plaintiff's deposition, however, he responded by filing a motion for a protective order. After that motion was denied, the plaintiff moved for reconsideration. That motion too was denied.

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(** from previous page)
The panel finds this case appropriate for submission without argument pursuant to 9th Cir. R. 3(f) and Fed. R. App. P. 34(a).

In August 1983, the district court ordered that all discovery in the case be completed by December 31, 1983. The defendants then served the plaintiff with a set of sixty-two interrogatories. He did not object to or answer the interrogatories within the thirty day period presecribed by Rule 33(a) of the Federal Rules of Civil Procedure. The defendants stipulated to extend the time for the plaintiff's response until November 23. On November 22, the district court denied the plaintiff's ex parte application for another extension of time.

On December 29, 1983 the defendants filed a motion to compel answers to the interrogatories. The plaintiff's only response was to file another motion for a protective order. On February 13, 1984, a magistrate granted the defendant's

motion, and ordered the plaintiff to answer "each and every interrogatory without objection by March 12, 1984." The magistrate explained that failure to comply with the order could result in dismissal of the plaintiff's action.

In May 1984 the plaintiff gave partial answers to eleven of the simplest interrogatories. The district court, however, found that even these "answers contained lengthy quotations of plaintiff's deposition testimony and other impertinent information." The plaintiff did not explain his failure to answer the remaining interrogatories. In June, rather than attempting to answer any more of the interrogatories, the plaintiff moved for leave to amend his complaint. The district court denied the motion on the ground that the proposed amendment

would be futile because it neither added claims for relief nor satisfied the requirement that pleadings be short and to the point. The court also gave the plaintiff one more week, until July 9, 1984, to comply fully with the order compelling answers to the interrogatories.

On that day, more than a year after the complaint had been filed, and more than nine months after the interrogatories had been served, the plaintiff, rather than providing the answers as ordered, filed yet another ex parte application for an extension of time. The district court denied the application. On July 26, the plaitiff still had not complied with the order, and the district court dismissed the action with prejudice.

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II.

DISCUSSION

Rule 37 of the Federal Rules of Civil Procedure "authorizes the district court, in its discretion, to impose a wide range of sanctions on a party who fails to comply with the rules of discovery or with court orders enforcing those rules." See Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585, 589 (9th Cir. 1983). Our decisions interpreting Rule 37 and the inherent powers of the district court allow dismissal of an action when a party's willful disobedience of discovery orders prejudices an opposing party's ability to present its case or is "utterly inconsistent with the orderly administration of justice." See id. at 589; Phoceene Sous-Marine, S.A. v. U.S.

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Phosmarine, Inc., 682 F.2d 802, 806 (9th Cir. 1982).

We review a district court's dismissal pursuant to Rule 37 only for an abuse of discretion. We will not reverse an exercise of discretion unless the record leaves a "definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976).

Our review of the record in this case persuades us that the dismissal of the plaintiff's action was not an abuse of discretion. The plaintiff's repeated and prolonged refusal to answer the defendant's interrogatories were fairly characterized by the court as "willful."

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Both the district court and the magistrate patiently explained to the plaintiff that if the litigation were to proceed at all, it could only be on the basis of his cooperation with the defendants' attempt to discover the basis of his claims. The district court was more than generous in allowing the plaintiff extensions of time in which to prepare answers. He nonetheless persisted in raising vague and untimely objections to the discovery requests and refused to provide any meaningful answers on the central issues of the case.

Some sanction was clearly appropriate, and we cannot say that the district court abused its discretion when it chose to dismiss the action. It appeared highly doubtful that any monetary sanction could have been collected,

and thus could not have been expected to secure compliance with the discovery orders. The plaintiff was given repeated extensions, second chances, and warnings. The district court concluded, and reasonably so, that the plaintiff would never have provided meaningful answers to a significant number of the interrogatories. If the litigation had proceeded, it would only have been at the risk of impairing the court's ability to make a reasonably informed decision on the merits of the case.

The plaintiff's only colorful argument on this appeal is that the magistrate who issued the order compelling the answers abused her discretion when she refused to require the defendants to reduce the number of their interrogatories. Several days before the

defendants served their interrogatories on the plaintiff, the district court for the Central District of California published new local rules of procedure. One of those rules limits to thirty the number of interrogatories a party can be required to answer. The defendants had served the plaintiff with sixty-two interrogatories. The new rules, however, did not take effect until October 1, 1983, at which time the attempted discovery in this case was well underway.

But even if the new rules were applicable to the defendants' interrogatories, the plaintiff waived any right he may have had to object to them. Rule 33(a) of the Federal Rules of Civil Procedure requires that a party answer or object to any interrogatories within 30 days after they are served. Here, the

plaintiff offered no objection to the interrogatories until more than two months after the expiration of the stipulated extension.

Finally, given all the circumstances of this case, it would not have been unreasonable for the magistrate and the district court to conclude that the plaintiff would never have answered even a significant number of the defendants' interrogatories, much less the thirty that could have been required of him under the new local rule. We cannot say that the magistrate's refusal to reduce the number of interrogatories was an abuse of discretion.

The plaintiff's pro se status does not alter our conclusion. His conduct placed him beyond the limits within which he should have been saved from himself by

the patience and forbearance of the district court.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

P.O. Box 547

San Francisco, California 94101

To: All Counsel in 84-6259 Sonderegger v. E.F. Hutton & Co.

Date: June 26, 1985

Dear Counsel:

Upon due consideration of your objection to submission of this case without argument, the Court has decided oral argument is not necessary.

On June 12, 1985, your case was submitted for decision to Judges Choy, Sneed, and Pregerson, CJJ. You will be

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promptly notified by mail when the case is decided.

Very truly yours,

Phillip B. Winberry
Clerk of Court

By:
Tim Hom
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER,

Plaintiff-Appellant,

v.

E.F. HUTTON & CO., INC., NORMAN W. SINGER and ROBERT A. MUELLER,

Defendants-Appellees.

FILED
August 21, 1985
Phillip B. Winberry
Clerk, U.S. Court of Appeals

No. 84-6259

ORDER

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.

Appellant's motion to file supplemental brief is moot.

Appellant's motion for an extension of time to file a rehearing petition is denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER,

Plaintiff-Appellant,

v.

E.F. HUTTON & CO., INC., NORMAN W. SINGER and ROBERT A. MUELLER,

Defendants-Appellees.

FILED
Sep 13, 1985
Clerk, U.S. Court of Appeals

No. 84-6259

DC No. CV 83-1414-PAR
Central California

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.

The appellant's motions for reconsideration of this court's order filed August 21, 1985 are DENIED.

FILED
MAR 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1179

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ARNOLD SONDEREGGER,

Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;
NORMAN W. SINGER; and
ROBERT A. MUELLER,

Respondents.

SUPPLEMENTAL BRIEF BY THE PETITIONER

ON PETITIONER FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, IN PROPRIA PERSONA
628 S. ARDMORE, APT. 22, LOS ANGELES,
CALIFORNIA 90005

No. 85-1179

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

ARNOLD SONDEREGGER,

Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;

NORMAN W. SINGER; and

ROBERT A. MUELLER,

Respondents.

SUPPLEMENTAL BRIEF BY PETITIONER

The Supreme Court Rule 22.6. The case of Fjelstad v American Honda Motor Co. 762 F2d 1334. June 25, 1985 for the 9th Cir. was not available at party's last filing. To get in the Federal Reporter takes aaout six months.

Before FARRIS, ALARCON & FERGUSON CIRCUIT JUDGES, THE Court of Appeals, FARRIS, circuit judge hold, p. 1342,

"(15) Sanctions imposed under Rule 37 (b)(2)""must be specifically related to the particular claim' which was at issue in the order to provide discovery."" Insurance Corp. of Ireland, 456 U.S. at 707, 102 S.CT. at 2106. "This requirement reflects the rule of Hammond Packing Co. vs Arkansas, 212 U.S. 322, 29 S.CT. 370, 53 L. Ed. 530 (1909), which held that striking the answer and entering default judgment against a corporate defendant that refused to provide any documents or to permit its officers to be deposed did not deny the defendant due process because its refusal to produce material evidence created a presumption that

"its asserted defense was meritless.

"Unlike the defendant's refusal to to disclose any material information in Hammond Packing, American Honda's failure to supplement its response to the interrogatory concerning potential witnesses does not give rise to a presumption that the denials in its answer to the complaint are untrue or that its defenses are meritless." Fjelstad v American Hona Co. was REVERSED and Remanded.

In the present case the US. DIST. JUDGE, in the Mem. of Decision quoted a caution from the case cited, which was Whlie v R.J. REYNOLDS IND. INC.709 F2d 585, at page 591, (9th Cir.)

"..Sanctions may violate due process when imposed only for purposes of

"punishmnent of violations of court orders rather than to redress a discovery violation which threatens the rightful decision of the case."

In the Wylie case supra, p. 589, "The district court ... based dismissal ...on two findings:(1) knowingly false denials of rebating by PFEL and its counsel, Aliota & Alita; and(2) the Aliota firm's deliberate efforts on rebating."

Thus, in the present case Petitioner made new discoveries of fraud, such as E.F.HUTTON & COMPANY, INC. after receiving 115 shares from MERRILL LYNCH, PIERCE, FENNER & SMITH INC. on the top of the monthly statement changed the bottom of the page to read 215 shares received and made a false security

of 100 shares of IBM in the value of the stocks and even paid a false dividend for 6½ months, which was concealing the fraud, and made it an intentional additional fraud. The accounting found it on the First Margin call, but the Petitioner did not find the fraud until late in this law suit.

Therefore, the Wylie case supra was in its intent for the Petitioner, who continued to make discovery in his motion to file a related-back 3rd Amended complaint with a demand for trial by jury, and the proposed 3rd Amend. Cpl. with 43 pages of facts, testimony and 15 exhibits of documentary evidence. This was on July 5, 1985. and on July 2, 1984

at the hearing by U.S.DIST. JUDGE, no facts or law were allowed to be presented and in the Civil Minutes,

"Court issues a tentative ruling."

"..."

"Court denies plaintiff's motion for leave to file a related back 3rd amended complaint."

Whereupon, the Petitioner, lodged on July 5, 1984(a month later than the original filing of 3rd. and before the July 12, 1984 mem. of decision of the U.S. Dist. Judge, the following:

"THIS IS AN ADDITION TO THE MOTION TO FILE THE THIRD AMENDED COMPLAINT, which on page 5, cited the Ninth Cir. case of ARRINGTON vs. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. 651 F2d 615 (1981), which thus, provided for the U.S.DIST. JUDGE to take JUDICIAL NOTICE

of the case before her July 12, 1984 Memo. of Dec. From Arrington sup. 621, "One set of misrepresentations concerned the risks of stock purchases to injure the Arringtons. The other dealt with predicted short-term preformance of certain stocks."

The Ninth Cir. affirmed liability for damages awarded by the U.S.DIST. COURT.

In both the filed First Amended Conplaint, and in the3rd amended complaint the same causes of action upon which relief can be granted were alleged, and with facts.

In the 3rd. Amend. Cpl. the risks of not disclosing the double loss from amargin call, and misrepresenting, and refusing to sell in a high interest

delining market, which consumed Petitioner's account wer alleged and factually presented on paragraphs 32, 33 & 34 of the lodged 3rd amend. cpl., that showed by the 9th cir. case law that the Petitioner had a meritorius case, that had causes of action upon which relief could be granted.

At the July 2, 1984 hearing, Petitiner and in an ex-parte application asked for an extention of time to answer interog!s and both were denied, except a week to answer 11 personal questions already answered in his 4 hour deposition.

Petioner continued answering interrog.'s on the record July 1q, 1984, no. 23 &24 of factual testimony, On July 27, 1984 ans. on no. 34 on the merits., On Aug. 5, 1984 made a motion for reconsideration that had 12 pages of facts, testimonials and cases.

On Aug 22, 1984 the U.S. DIST. JUDGE denied the motion for reconsideration and cited Wylie supra, and misapplied the case not to allow more answers to interrogatories, because unlike the Wylie case the Petitioner never was hiding discovery, but was continuing to make discovery.

On Aug. 30, 1984 the U.S.DIST. had a last chance before denying the motion of the Petitioner for Relief From Judgment by a motion under F.R.C.P. Rule 60, to set aside the judgment on dismissal as being void.

The U.S. DIST. JUDGE took Juidical Notice of the Whlie case, cited twice in her decisions, bu failed to realize, the memo of dec. was for punishment and not for discovery and therefore violated the 5th Amend. to U.S. Const. and therefor had no jurisdiction and was void.

Both the Wylie case supra, and the Fjelstad v American Honda Co. 762 F2d 1334 (9th Cir) quoted from the S.CT. case of Insurance Corp. of Irleland 102 S, Ct, at 2106, that reflected Hammond Packing Co. 29 S.CT. 370.

Petitioner showed the dismissal was for punishment, and to prevent the Petitioner from dicoverying the frauds, and that the Petitioner had a meritoriou case.

If answers were not as fast as wanted a sanction of giving Repsondents more time to make any answer on the merits would have been fair.

In conclusion Petitioner prays this case be reversed and remanded to the 9th cir. for proceedings on the Merits. Respectfully presented by ARNOLD SONDEREGGER, 628 S. ARDMORE, apt. 22, Los Angeles, CA. 90005

Arnold Sonderegger